C. CRAIG FOLSON

IBLA 86-241 Decided February 22, 1988

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, accepting appellant's high bid pursuant to the Department's competitive leasing procedures. NM 064621 OK.

Vacated and remanded.

1. Accounts: Refunds -- Oil and Gas Leases: Generally -- Oil and Gas Leases: Competitive Leases

Where the evidence establishes that a high bidder predicated his bid at a competitive oil and gas lease sale upon a BLM memorandum which erroneously reported the amount of funds held in an escrow account attributable to the subject parcel, the Board will rescind the offer and direct BLM to refund appellant's bid deposit.

APPEARANCES: C. Craig Folson, pro se; Margaret C. Miller, Esq., Santa Fe, New Mexico, Office of the Solicitor, U.S. Department of the Interior, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE KELLY

C. Craig Folson has appealed the November 26, 1985, decision of the New Mexico State Office, Bureau of Land Management (BLM), accepting Folson's high bid of $ 31,200 for parcel No. 60, containing 1.38 acres, situated in sec. 4, T. 10 N., R. 7 W., Indian Meridian, Canadian and Grady Counties, Oklahoma, pursuant to the competitive leasing procedures set forth at 43 CFR Subpart 3120. 1/

1/ BLM filed a motion to dismiss this appeal on the basis that Folson's notice of appeal was unaccompanied by a statement of reasons. Folson responded in a telephone conversation with counsel for BLM that he considered the notice of appeal to contain his statement of reasons. Thereupon, BLM's counsel amended her motion to dismiss, asserting that the Board should dismiss the appeal anyway, because Folson failed to send a copy of the notice of appeal to the Field Solicitor in Santa Fe, New Mexico, in violation of 43 CFR 4.413. We deny the amended motion to dismiss filed by counsel for BLM, since she has shown no prejudice by Folson's failure to serve his notice of appeal upon the Field Solicitor. See United States v. Wirz, 89 IBLA 350, 351 n.1 (1985).

In his notice of appeal, and in a letter to the Board dated March 12, 1986, Folson states that his bid of $ 31,200 was predicated on a May 1, 1985, memorandum from Keith Bennett, Chief of the Southwest Region Evaluation Team (SRET). In this memorandum which justified rejection of an earlier bid submitted by appellant, Bennett estimates the presale value of "tract 35" (synonymous with parcel 60) to be $ 26,450 per acre, based upon "the amount of money deposited to the escrow account established under the communitization agreement." Thus, according to Bennett, "[t]he net funds in escrow after deductions for royalties and the pro rata share of completion and operating costs are deducted are $ 35,500.00."

Folson states that Dave Davidson of Phillips Petroleum Company, lease operator, subsequently informed him that there is only $ 21,428 held in escrow attributable to "this interest." Folson contends that, in fact, based upon the $ 21,428 figure, the lease is worth only $ 14,433. He concludes that he is willing to pay $ 14,433 for the lease.

By order dated October 15, 1987, the Board directed BLM to inform it, inter alia, as to the amount of funds held in escrow attributable to parcel No. 60 as of May 1, 1985, the date of the BLM memorandum upon which Folson predicated his bid. BLM requested this information from Phillips Petroleum, the unit agreement operator, which responded that as of April 1, 1985, there was $ 24,035.45 in an escrow account for parcel No. 60, and that $ 1,853.98 must be deducted from that figure for drilling, completion, and operating costs. 2/

In a letter to the Board dated December 23, 1987, appellant asserts that "[t]he May 1, 1985 memo from SRET to Mineral Leasing is clearly erroneous when it states $ 36,300 3/ was in the account after all costs were deducted." (Emphasis in original.) He reiterates his contention that after all costs are deducted from the funds held for parcel No. 60, his "bid of $ 14,433 is very appropriate." He hopes the Board "will now * * * order issuance of said lease by the BLM for consideration of $ 14,433 less the $ 6,240 previously paid * * * in March, 1985."

[1] In B. H. Northcutt, 75 IBLA 305 (1983), the appellant appealed from a BLM decision rejecting his low offer at a competitive oil and gas lease sale, asserting that BLM failed to notify the bidders until the day of the bid opening that the parcel was committed to a unit agreement, and that the sale was inadequately advertised by BLM prior to sale. The Board addressed appellant's contentions as follows:

> Taken in its entirety, appellant's statement of reasons claims the sale was negligently conducted by BLM and that, as

2/ Phillips Petroleum does not indicate whether the $ 1,853.98 amount should be deducted from $ 25,611.09, the amount in the escrow account attributable to parcel No. 60 as of Nov. 18, 1987, or $ 24,035.45, the amount in the escrow account as of Apr. 1, 1985.
3/ The May 1, 1985, memorandum states that the escrow account contains $ 36,500 for parcel No. 60.

> a consequence, appellant was prevented, to his detriment, from preparing an informed and adequate bid for the parcel to be leased. This bare assertion is wholly unsupported, however, either by an offer of proof to show actual injury or a specified statement of how this conclusion is reached. The record indicates the sale was regularly and timely advertised. While failure to give prior notice that the parcel was subject to inclusion in a unit agreement may conceivably have disadvantaged the high bidder, if unaware of the joinder, no basis for prejudice to appellant is shown by him. He does not describe how he prepared the $ 51 bid be submitted or how he would have proceeded differently had he known of the unit agreement. [Footnote omitted].

75 IBLA at 306.

By contrast, Folson demonstrates that he prepared his bid based upon erroneous figures contained in SRET's May 1, 1985, memorandum. As stated, Phillips Petroleum now represents that as of May 1, 1985, the escrow amount attributable to parcel No. 60 was $ 24,035.45, rather than $ 36,500 as stated in SRET's memorandum. Folson asserts that if he had been aware of the correct amount, he would have submitted a bid of $ 14,433. We conclude that Folson has demonstrated that he was prejudiced by the erroneous figures contained in SRET's memorandum.

However, we do not agree that the appropriate remedy is to order BLM to accept Folson's offer of $ 14,433 and issue a lease to him for parcel No. 60. In Howell Spear, 56 IBLA 151 (1981), the appellant requested a rescission of his offer for a competitive lease, and a refund of his bid deposit, asserting that subsequent to submitting the high bid he discovered that the City of Laredo, in Webb County, Texas, would impose certain restrictions upon lease operations. The Board pointed out that appellant was wrong in his statement that the notice of sale failed to mention the requirements imposed by the City of Laredo. The Board refused to rescind the offer, and declared appellant's bid forfeited under 43 CFR 3120.4-1. 4/ See also D. B. Allsup, 92 IBLA 197 (1986). Had the appellant in Howell Spear demonstrated that the bidding process was irregular, and that he was prejudiced thereby, the Board's decision suggests that the proper remedy would have been to rescind the offer and refund appellant's bid. In fact, the Board followed that approach in Samson Resources Co., 55 IBLA 51 (1981), in which the appellant was the high bidder for a parcel which was subject to conflicting claims of

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4/ Regulation 43 CFR 3120.4-1 provided: "If a bidder, after being awarded a lease, fails to execute it or otherwise comply with the applicable regulations, his deposit will be forfeited and disposed of as other receipts under this act."

The current version of this regulation, 43 CFR 3120.6, provides in similar terms: "If the high bid is rejected for failure of the successful bidder to execute the lease forms and pay the balance of the bonus bid, or otherwise to comply with the regulations of this subpart, the one-fifth bonus accompanying the bid shall be forfeited." See 48 FR 33680 (July 22, 1983).

title. Therein, the Board voided the sale of the parcels and directed that appellant's bonus bid deposits be returned. Because Folson has demonstrated prejudice as the result of relying upon erroneous figures contained in SRET's memorandum, we believe the approach in Samson is applicable here. We therefore rescind the acceptance of Folson's lease offer and direct that BLM refund his bid deposit. Cf. Texaco U.S.A., 82 IBLA 61 (1984).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is vacated and this case is remanded to BLM for action consistent with this opinion.

John H. Kelly
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Will A. Irwin
Administrative Judge